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A NOTE ON THE TRIBUNATE OF TI. GRACCHUS¹

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I cannot agree with those historians who hope to solve all the present by simple reference to the past; still less can I follow those who claim that the past has no lesson for us. Ancient history, especially Roman history, does have meaning for us. Their experience is no longer regarded as an epitome of all possible political history, but it can at least teach us some things to avoid if we wish to escape their fate. With this in mind, I wish to study the tribunate of Tiberius Gracchus.

Lecturing recently on the events of the year 133 B.C., I used, half-unconsciously, the words, "Octavius was recalled." Later, realizing the language I had used, I was led to wonder how far the modern term and the ancient practice corresponded. The following paper is the result of my curiosity. I do not feel sure that I have all the evidence, but I do believe that additions will not materially alter the conclusion.

Let us first review briefly the events that led up to the deposition of Octavius. We must begin with the Roman conservation problem, which was almost as old as the republic. The public land, acquired by conquest, was theoretically distributed in small parcels at a moderate rental among the poorer citizens, that they might be better able to bear the burdens the state imposed upon them. Perhaps at some times, the state, through lack of time to make the proper allotment, allowed the land to be worked by anyone who would pay a moderate share of the crop to the state.² Through this, or some other method, the rich gradually gained possession of large tracts of the public domain. The Licinian laws of 367 B.C. limited the amount of public land that anyone might

¹ Read at the meeting of the Classical Association of the Pacific Northwest, Portland, Ore., November 28, 1912.

² Appian *B.C.* i. 7.

hold, but this provision was not always enforced. The war with Hannibal assisted in the ruin of Italian agriculture and drove the small farmers to Rome in great numbers. The nobles took possession of much of the land thus made vacant, and converted it into pleasure grounds, game preserves, and cattle and sheep ranges worked by slaves. The correction of these abuses was considered by various men, notably by C. Laelius. He went so far as to draft a reform measure, but, foreseeing opposition, gave up the task and received as his reward, it would seem, the surname of *Sapiens*.

In 133 Ti. Gracchus was elected tribune of the people and proposed what was virtually a re-enactment of the agrarian provisions of the Licinian laws.¹ His proposal met with determined opposition. We have enough specimens of Roman debates on such laws to know that they might be printed today in such a case as the one involving the Alaska coal fields with only changes of names. The opposition came from two classes as hard to distinguish then as now, those who were consciously violating the laws that already existed, and those, among whom were many of the Italian allies, who had in good faith bought and improved land and thought they had clear title. When the clerk of the assembly was about to read the bill, another tribune, M. Octavius, interposed his veto. Tradition says or suggests that he was influenced by improper motives. I cannot disprove it, but his conduct in the whole affair rather wins my respect. When this interruption occurred, Gracchus proclaimed a *justitium*. This institution, which involved a suspension of all public and private business, especially the closing of the treasury and the cessation of legal proceedings,² was only rarely resorted to. The tribune Licinius had used it to compel the passage of the legislation bearing his name. The senate tried in vain to reconcile the two tribunes, and then Gracchus entered on a new course of action. He proposed that either he or Octavius be retired from office by vote of the people, to avert civil war. Naturally Octavius declined, thinking such procedure illegal. Thereupon

¹ The facts in the following account are derived mainly from Plutarch *Ti. Gracchus* 10 ff.

² Cic. *de Har. Res.* 26. 55; Liv. iii. 27. 2.

Gracchus put the question to the people on the deposition of Octavius. The general principle involved seems to have been whether a tribune who acted contrary to the people's interests did not *ipso facto* forfeit his office. The term "people's interests" was as usual not defined, but generally it meant the wishes of the people or the leaders who controlled them. Before all the tribes had voted, Tiberius again implored Octavius to withdraw his veto and save himself from dismissal, but when the latter remained firm Gracchus allowed the vote to continue and Octavius was deposed. It is impossible and unnecessary to determine whether Gracchus was moved by his friendship for Octavius, by a desire to play to the gallery, or by a growing premonition that he was starting a movement that might have most serious political consequences, the responsibility for which he would gladly avoid. All have been suggested, and probably all are partly true.

But criticism of Gracchus was not wanting. A certain Annius asked him a question which he could not answer. The question was perfectly simple and obvious, but so far as I know it has never been squarely met and answered. As Plutarch reports it,¹ it was this: "If you had a design to disgrace and defame me, and I should appeal to one of your colleagues for protection, would you therefore fall into a passion and depose him?" Gracchus, usually so ready of speech, was visibly disconcerted and adjourned the assembly. Later he defended himself in a set speech of which the outline is preserved by Plutarch.² Its argument has been justly criticized as sophistical and irrelevant. Apparently it did not silence the critics, for Gracchus felt compelled to seek re-election. Accused of seeking royal power, he was killed by the nobles.

On the question of the deposition, scholars disagree. Ancient authority generally condemned it as a violation of the sacrosanctity of the tribune. Even Plutarch calls it "neither legal nor fair." Cicero goes so far as to call it *seditio* (*Mil.* 27. 72; cf. *Brut.* 27. 103). Moderns are more concerned with the constitutional problem. Most historians regard the deposition as at best unusual, if not unconstitutional or even revolutionary. Some call it subversive of

¹ Plut. *op. cit.* 14.

² Plut. *op. cit.* 15.

the principles of stable government.¹ Ferrero² calls it "new and quite unconstitutional" and goes blithely on with the statement that after it Gracchus frankly became a demagogue. Niebuhr,³ Beesly,⁴ Botsford,⁵ Pöhlmann⁶ defend it more or less perfunctorily. Yet few of the handbooks provide us with the necessary evidence to form an opinion. It is my task to supply some of that evidence, and, without venturing to pronounce an unqualified judgment, to present and interpret the material. Various questions suggest themselves. If this procedure was unusual, how did the Romans control their magistrates and keep them in accord with public opinion? Was there anything corresponding to the recall? How did they get rid of magistrates who were obnoxious to them? Answers, more or less satisfactory, can be found for these questions.

The problem of an undesirable magistrate confronted the Romans at the very beginning of the republic. Brutus' assistant in the expulsion of Tarquin the Proud was Tarquinius Collatinus, whom the people suspected on account of his name and family ties. Two different versions of his fate are recorded. Cicero,⁷ following what Mommsen⁸ says is the older tradition, says that Brutus forced him to give up his office. With this Dio⁹ agrees. On the other hand, Livy¹⁰ clearly states that he abdicated. An attempt was made to remove his successor, P. Valerius, charged with seeking royal power, but he defended himself and was acquitted.¹¹ The abdication of a magistrate was possible, but it seems to have been, in form at least, voluntary. The bringing of pressure to bear on a magistrate to induce him to resign seems to suggest a lack of any means of compelling his resignation. Cases of abdication under pressure were not uncommon. M. Claudius Glicia, dictator in 249 B.C., suffered this fate, but Glicia was probably a

¹ E.g., Abbott, *Roman Political Institutions* (Boston, 1902), 96.

² *Greatness and Decline of Rome* (New York, 1907), I, 47.

³ *Lectures on the History of Rome*, 3d ed. (London, 1870), 502 f.

⁴ *The Gracchi, Marius and Sulla* (New York, 1904), 32 f.

⁵ *Roman Assemblies* (New York, 1909), 367 f.

⁶ *Sitzb. d. bayer. Akad.*, 1907, 465 f.

⁷ *Brut.* 14. 53; *de Off.* iii. 10. 40.

⁸ *Röm. Staatsr.*, I, 629.

⁹ 46. 49.

¹⁰ ii. 2. 10.

¹¹ Liv. ii. 7. 5 f.

freedman and was appointed by his patron as an insult to the senate.¹ An unsuccessful attempt was made by the senate to force Flaminius, consul in 223 and 217 B.C., to resign his former consulship on account of defects in the auspices.² This seems to have been the stock excuse. Compulsory resignation was probably the lot of the Catilinarian Lentulus in 63 B.C., though the texts are ambiguous.³ The consuls T. Veturius and Sp. Postumius, who were defeated at the Caudine Forks, resigned, doubtless urged by the senate.⁴ A higher magistrate could suspend a lower, while a dictator could apparently compel a resignation.⁵ E.g., the dictator Cincinnatus reduced the consul Minucius to the rank of *legatus*,⁶ and the dictator L. Papirius Cursor forbade his master of the horse, Q. Fabius Rullianus, *quicquam pro magistratu agere*.⁷ (Of course Livy's well-known weakness on constitutional history permits a degree of uncertainty regarding cases where he is the only source.)

A striking and difficult case of abrogation is that of Q. Fabius Maximus Cunctator, made dictator after the defeat at the Trasimene Lake in 217 B.C. The criticism of his master of the horse and the nature of his own policy had rendered him unpopular at home, and the tribune M. Metilius led a crusade against him. His language is so remarkable that I quote it at length: "Quas ob res, si antiquus animus plebei Romanae esset, audaciter se laturum fuisse de abrogando Q. Fabii imperio; nunc modicam rogationem promulgaturum de aequando magistri equitum et dictatoris iure."⁸ Whether the unusual manner of Fabius' nomination as dictator had anything to do with it or not, I cannot say.⁹ At any rate the dictatorship was spared at other times, perhaps because the office was abandoned after 202.¹⁰ It would be interesting to know the

¹ Liv. *Ep.* 19; Suet. *Tib.* 2.

² Liv. xxi. 63. 1 f.

³ Cic. *in Cat.* iii. 6. 15; iv. 3. 5; Dio 37. 34; Sall. *Cat.* 47; Plut. *Cic.* 19.

⁴ Liv. ix. 10. 2.

⁵ Liv. v. 9. 6; xxx. 24. 3.

⁶ Liv. iii. 29. 2.

⁷ Liv. viii. 36. 1.

⁸ Liv. xxii. 25. 4 f., esp. 10.

⁹ Liv. xxii. 8. 5.

¹⁰ Abbott, *op. cit.*, 183.

real reason for Metilius' not proposing the recall of Fabius. The dictatorship was so peculiar an office that it may have been held in especial reverence.

The attitude toward the proconsul was rather different, and attempts to abrogate that power were made early. The first case that I have noted is that of M. Claudius Marcellus, proconsul in 209 B.C. A tribune, C. Publicius Bibulus, proposed his recall. Marcellus returned to Rome and defended himself so vigorously that the charge against him was dropped, and to console him for his chagrin, the people elected him to his fifth consulship on the following day.¹ In 204 B.C. such a strict conservative as Fabius Maximus suggested an attempt on Scipio through the agency of a tribune, but nothing came of it.² The earliest successful attempt was that in the case of M. Aemilius Lepidus in 136 B.C.³ There is no real reason to believe, except the lack of a definite statement, that this had not been thought of before 209, but in any case, it would hardly serve as a precedent for the deposition of a regular magistrate like the tribune.

If we except the possible case of Collatinus, and the proposal of Metilius, which not even he was willing to follow up, we have, apparently, no precedent for Gracchus' action. The reasons may perhaps be found. The Roman term of office was short, and not much would be gained by haste. The case of Marcellus shows that this was of minor importance. The true reason is probably the Roman theory that the executive was a branch of the government co-ordinate with the people.⁴ We must allow too for the characteristic Roman reverence for tradition and constitutional form. Yet the power of the people had been wrested from the senate and the magistrate by repeated violations of tradition and established form, and if the principle appealed to by Gracchus is capable of defense it is on the ground of the necessity of popular sovereignty. This argument of course can be used to prove almost anything, e.g., the justice of conferring extraordinary powers on

¹ Liv. xxvii. 20. 11 f.; Plut. *Marc.* 19.

² Liv. xxix. 19. 6.

³ Appian *Iber.* 83.

⁴ Greenidge, *History of Rome* (London, n.d.), I, 120 f.; Mommsen, *loc. cit.*

Pompey in 66 B.C. Gracchus seems to have recognized later that his act might lead to serious results, and in his defense he tried to repudiate the view that the sanctity of the tribune had been violated. Granting the violation, it seemed to him more desirable that the people should rule than that the majesty of the tribune should be preserved. Whether Gracchus was moved by the possible precedents I have cited cannot be determined. I suspect that he was not. Furthermore, I suspect that he was so completely absorbed in the present that he took little heed of the past or the future. On this ground it seems to me that his conduct is indefensible. All constitutional methods had not been exhausted. It was not absolutely necessary that the bill be carried just then. If Gracchus had been a little more patient he could probably have secured the election of a sympathetic college of tribunes for the next year, and the severe strain on established custom would have been avoided. As it was, Gracchus was hurried from one step of doubtful constitutionality to another, until his name became associated in men's minds with revolution. It may be argued that the forms Tiberius broke through were already worn out, as our constitution and traditions seem to some politicians now; it may be argued that a tribune like Octavius, who disregarded the popular will for whatever motive, was an anomaly, but these considerations cannot free Gracchus entirely from the responsibility of having hastened the revolution.

Let us now trace briefly the history of the recall movement after Gracchus. L. Servilius Caepio, consul in 105 B.C., was defeated by the Cimbri, brought to trial by the tribune C. Norbanus, and deposed.¹ Livy (*loc. cit.*) says of him: "primo . . . post regem Tarquinius imperium ei abrogatum." Livy, as we have seen, did not believe that Collatinus was deposed. L. Cornelius Cinna, consul in 87 B.C., was deposed by the senate, but the army did not admit their right to do so. He returned to the city with Marius and coerced the senate into recognizing him again.² When Cinna was deposed, L. Merula was chosen to fill the vacancy, but was crowded out by the restoration of Cinna.³ Three years later,

¹ Cic. *de Or.* ii. 28. 124; ii. 47. 197; Liv. *Ep.* 67.

² Appian *B.C.* i. 65 f.; Vell. ii. 20.

³ Appian *loc. cit.*

another Marian, the consul Cn. Papirius Carbo, refused to come to Rome to hold the elections, but was threatened with deposition by the tribunes and yielded.¹ In 53 B.C. a tribune, Lucilius, suggested that Pompey be made dictator and was threatened by Cato with loss of office.² Two other tribunes suffered in 45 B.C. C. Epidius Marullus and L. Caesetius Flavus stripped the crowns from Caesar's statues and were deposed—an act of the great dictator's which even his most enthusiastic admirer must regret.³ Another tribune, P. Servilius Casca, met a similar fate in 43 B.C.⁴ In the same year a praetor, Q. Gallius, was accused of plotting against the life of Octavianus, and, according to one form of the story, was stripped of his office by his colleagues.⁵

Two things may be noted, the greater number of cases and the greater variety of methods. The tribunes, the senate, and apparently the colleagues of the victim assumed the function. It must be said, however, that the language of Latin authors is often so ambiguous that we cannot distinguish between deposition and forced resignation.

To my mind, the episode and its consequences have less significance than the spirit that made it possible. The violation of form (to use the mildest term) of which Gracchus was guilty was, it seems to me, symptomatic of the whole attitude of the people, and here is the lesson for us. Possibly, strictly speaking, the deposition of Octavius was not unconstitutional. Possibly it can be justified on the ground that the will of the people must and shall prevail. Possibly there were precedents, or the people made their own precedents, as Cicero boasted later that they did in the case of Pompey.⁶ The evidence that any of these possibilities is true has not yet appeared. The real significance of the affair, to my mind, is that the Romans were far more interested in a temporary situation than in a general principle. They were willing

¹ Appian *B.C.* i. 78.

² Plut. *Pomp.* 54.

³ Dio xlv. 10; Plut. *Caes.* 61.

⁴ Dio xlvi. 49.

⁵ Appian *B.C.* iii. 95; Suet. *Aug.* 27.

⁶ *de Imp. Cn. Pomp.* 61.

to overlook the doubtful legality of the motion, to violate the sacrosanctity of the tribune and interfere with the exercise of his veto power, if it pleased the section of the people that happened to be in a majority in the assembly. They were willing to sacrifice the constitutional devices and traditions that had been accumulating for centuries, to accomplish their momentary will. I am not trying to defend the Roman constitution, nor to show that because an institution is old it is necessarily good. But when any people is ready, with no serious consideration, to disregard legal and constitutional forms of proved value, there is danger ahead. Of course the Roman people of this period was becoming more and more an ignorant, unscrupulous mob, with no real interest in politics, and the assembly was accustomed to agree to every proposal made to it. So much the stronger, then, was the need of deliberation before placing before them revolutionary proposals of any kind. I cannot feel that Tiberius intended to endanger the republic. I do not believe that he foresaw that his action would be a precedent for other similar actions by less conscientious men and on less important occasions, but on the other hand I do not believe that he even thought of these possibilities until it was too late. Therefore I cannot acquit him of the charge of having hastened the fall of the republic and of having threatened the principles of free government. To my mind, the beginning of the end came when Scipio Africanus declared that if the whole Roman people wanted him for aedile he was old enough.¹ From that time on politicians cultivated the willingness of the people to break down old restrictions. I need only mention the centralization of power in the hands of C. Gracchus, the repeated and successive consulships of Marius, the dictatorship of Sulla, and the extraordinary commands given Pompey and Caesar. For this tendency Tiberius Gracchus was partly responsible. What is the moral? The proverb is too true to be trite: Eternal vigilance is the price of liberty.

¹ Liv. xxv. 2. 7.